HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

AND

HON'BLE SRI JUSTICE R. SUBHASH REDDY

Writ Appeal No.2539 of 2005

Between:

The Central Bank of India, Kakinada Branch

… Appellant

And

The State of Andhra Pradesh rep. by the

Secretary, Industries and Commerce (Sugar) Department

and others … Respondents

::JUDGMENT::

Counsel for the appellant: Sri K. Subramanya Reddy, Senior Advocate for

Sri Ch. Siva Reddy

Counsel for respondents No.1 to 4: G.P. for Industries & Commerce

Counsel for respondent No.5: V.V.N. Narayana Rao

December 22, 2005

Per G.S. Singhvi, CJ

Whether Assistant Cane Commissioner, Samalkot, East Godavari District (respondent No.3) has the jurisdiction to auction the properties of M/s.Kirlampudi Sugar Mills Limited, Pithapuram, East Godavari District (respondent No.5) for realization of sugarcane arrears and purchase tax under the A.P. Revenue Recovery Act, 1864 (for short 'the 1864 Act') is the question which arises for determination in this appeal filed against order dated 30-9-2005 passed by the learned Single Judge in Writ Petition No.19925 of 2005.

The appellant is the nationalized bank. It had sanctioned cash credit limit and term loan to respondent No.5. For securing repayment of loan, respondent No.5 is said to have hypothecated plant and machinery of the factory and created an equitable mortgage by deposit of title deeds in respect of agricultural land admeasuring Ac.43-08 in Survey Nos.565, 566, 629, 630, 631, 633 and 663 situated at Pithapuram of East Godavari District. On coming to know that the land mortgaged by respondent No.5 is proposed to be sold by the State Government for realization of sugarcane dues, Senior Manager of Kakinada Branch of the appellant sent communication dated 25-5-2005 to Collector, East Godavari District claiming priority of debt over the mortgaged property. After sometime, the appellant filed writ petition under Article 226 of the Constitution for quashing notice dated 2-9-2005 issued by the Assistant Cane Commissioner, Samalkot, East Godavari District, published in Eenadu Telugu Daily dated
4-9-2005 for holding public auction in respect of the mortgaged property to an extent of Ac.12-96 cents and Ac.1-00 in S.No.633.

The learned Single Judge referred to the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short "RDB Act"), the Securitisation and Re-construction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "Securitisation Act"), Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1961 (for short 'the Sugarcane Act'), Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) Rules, 1967 (for short 'the Sugarcane Rules') and the Revenue Recovery Act and dismissed the writ petition by observing that the petitioner has failed to avail the statutory remedy available under the RDB Act.

Sri K. Subramanya Reddy, learned Senior Advocate appearing for the appellant argued that the view taken by the learned Single Judge on the issue of availability of alternative remedy is erroneous and, therefore, the order under challenge should be set aside. He submitted that in its capacity as secured creditor, the appellant has to first issue notice under Section 13 (2) of the Securitisation Act and then a notice under Section 13 (4) of the said Act before any action under the RDB Act can be initiated and, therefore, this remedy cannot be treated as an affective alternative remedy. Learned counsel emphasized that giving of 60 days notice in terms of Section
13 (2) of the Securitisation Act is mandatory and sine qua non for filing an application under the RDB Act and, therefore, remedy available under the latter Act cannot be treated as an effective alternative remedy so as to preclude the appellant from seeking remedy under Article 226 of the Constitution.
Sri Reddy also assailed the conclusion of the learned Single Judge that the Sugarcane Act has overriding effect vis-à-vis the provisions of the RDB Act and the Securitisation Act. He submitted that Section 19 (2-A) of the Sugarcane Act, which was added by the Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) Amendment Act, 1976 and Rule 39-B of the Sugarcane Rules, which was inserted vide G.O.Ms.No.382, dated 19-6-2000 are ex facie inconsistent with the provisions of the RDB Act and, therefore, the same are liable to be declared as unconstitutional.

In the context of the submissions made by the learned counsel, we enquired from him as to why the appellant did not file appropriate application under the RDB Act and Securitisation Act even after publication of notice dated
2-9-2005, but he could not give any satisfactory reply and persisted with his submission that the proposed auction of the mortgaged property should be declared illegal because the appellant has a prior charge over that property.

We have given serious thought to the arguments of the learned counsel. It is an undisputed position that
Section 19 (2-A) of the Sugarcane Act provides for recovery of the unpaid price of the sugarcane as arrears of land revenue. In terms of Section 21 (3) of the Sugarcane Act, as amended in 1976, a sum due to the Government towards the purchase tax is first charge on the sugar produced out of the cane already subject to purchase tax. Sub-section (6) of Section 21 declares that if the tax is not paid with

interest within the prescribed time, then it shall be recoverable as arrears of land revenue. Since the Sugarcane Act framed by the State Legislature has received assent of the President on 23-12-1961, and it provides a comprehensive machinery for determination of the price of the sugarcane, payment thereof and also for recovery of the dues of sugarcane price, the same has to be treated as having overriding effect qua the provisions of other enactments including the RDB Act and the Securitisation Act which have been enacted by the Parliament and we approve the conclusion recorded by the learned Single Judge in this regard.

We also agree with the learned Single Judge that the remedies available to the appellant under the Securitisation Act and the RDB Act are effective alternative remedies and there is no extra-ordinary reason for making a departure from the established rule that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the writ petitioner.

For the reasons mentioned above, the appeal is dismissed. Needless to say that the appellant shall be entitled to avail the alternative remedies available under the RDB Act and the Securitisation Act.

G.S. SINGHVI, CJ

R. SUBHASH REDDY, J

December 22, 2005

Msv / svs